



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Space Age Engineering, Inc.

File: B-230148

Date: February 19, 1988

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### DIGEST

Protest filed more than 10 working days after the contracting agency denied the protester's A-76 appeal is untimely. Protester's continued pursuit of the appeal with the contracting agency does not alter this result.

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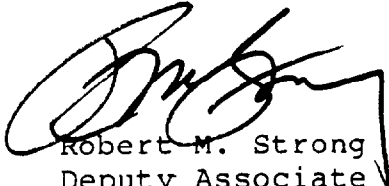
### DECISION

Space Age Engineering, Inc. (SAE), protests the Army Corps of Engineers' determination to retain in-house the motor pool operations for the Albuquerque District of the Army Corps of Engineers. This determination, made in accordance with the Office of Management and Budget (OMB) Circular A-76 procedures, was based on a comparison of the protester's bid submitted in response to invitation for bids (IFB) No. DACW47-87-B-0006, with the Corps in-house cost estimate. We dismiss the protest without obtaining a report from the Corps since it is clear from the material furnished by SAE that the protest is untimely. 4 C.F.R. § 21.3(f) (1987).

By letter dated November 6, 1987, the Corps rejected SAE's bid because the agency determined that the required services could be performed at a lower cost in-house than by contracting out. SAE then filed an administrative appeal of the agency's determination on November 9, contending that the government's cost estimate did not include certain cost elements in its cost comparison calculations that would have made the government's estimate higher than SAE's bid, which was the only one received. Although the agency appeals board found some errors in the comparison calculations, the agency's decision to retain the work in-house was upheld and a decision denying SAE's appeal was issued by letter dated December 10. SAE filed a request for reconsideration by letters dated December 16, 1987, and January 6, 1988. By letter dated January 19, the Corps affirmed its initial decision of December 10. SAE thereupon filed this protest with our Office on February 3.

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Where, as here, a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). Once informed of initial adverse agency action, a protester may not delay filing a subsequent protest while it continues to pursue the protest with the agency. Linn Timber, Inc.--Reconsideration, B-225430.2, Nov. 18, 1986, 86-2 CPD ¶ 584. In this case, the appeals board's decision of December 10, constituted initial adverse agency action and SAE was required to file any subsequent protest to our Office within 10 working days thereof. Because the protest was not filed until February 3, more than 10 working days later, the protest is untimely and will not be considered on the merits. See Sound Business Systems, Inc.--Reconsideration, B-228037.2, Sept. 24, 1987, 87-2 CPD ¶ 296. Accordingly, the protest is dismissed.

  
Robert M. Strong  
Deputy Associate  
General Counsel